



# HOUSE OF REPRESENTATIVES

HB 2584

data center tax relief; qualification

Prime Sponsor: Representative Stevens, LD 14

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**DPA** Committee on Transportation & Infrastructure

**DPA** Caucus and COW

**X** As Transmitted to the Governor

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## **OVERVIEW**

HB 2584 changes requirements and qualifications for the tax relief allotted to the owner, operator or qualified colocation tenant of a certified computer data center and modifies certification revocation by the Arizona Commerce Authority (ACA) and the Department of Revenue (DOR).

## **PROVISIONS**

1. States that the effective date of certification for tax relief from ACA is the date on which the application was submitted to the ACA.
  - a. Requires the copy of the certification sent by ACA to DOR to include the certification's effective date.
2. Changes investment requirements that the data center must meet in order to be eligible for the tax relief to include costs of improvements and stipulates that investment cost requirements are met whether the land, buildings, improvements, modular data centers or computer data center equipment are owned or leased or paid pursuant to a right to use agreement.
3. Requires the owner or operator's detailed records of all investment created by a new computer data center to include costs of improvement.
4. Allows ACA, rather than DOR, to revoke the certification of a new computer data center if it is determined that the investment requirements have not been met or there has been a violation of the requirement that computer data centers not generate, provide or sell electricity.
5. Allows DOR to recapture all or part of the tax relief provided to the owner or operator of a computer data center if the data center's certification was revoked for failing to meet investment requirements.
  - a. Stipulates that qualified colocation tenants are not subject to recapture of any part of tax relief received.
  - b. Permits contributing qualified colocation tenants to be subject to recapture if they are located in a computer data center that was certified after September 1, 2016.
6. Prohibits DOR from recapturing any tax relief provided directly to an owner, operator or qualified colocation tenant before the date of revocation, if the computer data center's certification was revoked as a result of the data center generating, providing or selling electricity.

7. Stipulates that the qualification period of an owner, operator or qualified colocation tenant automatically terminates if the certification of a computer data center is revoked.
8. Allows an owner or operator to appeal any revocation of certification with the Office of Administrative Hearings, rather than through the state board of tax appeals.
9. Stipulates that ACA has exclusive authority over issues related to certification, including determinations as to whether a computer data center has satisfied investment requirements, constitutes a qualified sustainable redevelopment project or has committed other violations.
10. Stipulates that DOR has exclusive authority over the administration of tax relief.
11. Requires the owner or operator to notify ACA and DOR of any changes to the list of qualified colocation tenants within 30 days.
12. Stipulates that the failure of an owner or operator to provide the list of qualified colocation tenants or notify ACA or DOR of changes within 30 days is not grounds for termination of the computer data center's certification, but may preclude unlisted colocation tenants from receiving tax relief until the list is provided or updated.
13. States that for the purposes of qualifying and continuing as a sustainable redevelopment project:
  - a. An owner, after receiving certification, may substantially demolish any or all of an existing building to the extent reasonably necessary to accommodate future computer data center use, and the demolition is not cause for loss of certification as a sustainable redevelopment project;
  - b. An existing building that has been substantially demolished before certification is not eligible to qualify as a sustainable development project;
  - c. An owner or operator may expand the boundaries of a certified computer data center by increasing the size of an existing building within a sustainable redevelopment project or by building additional improvements in an unlimited manner to the extent that the expansion is constructed on the same parcel of land or a contiguous parcel of land;
  - d. Expansion activities do not prevent a facility from maintaining its classification as a sustainable redevelopment project.
  - e. All construction activities and investments related to such demolition or expansion are considered part of the sustainable redevelopment project.
14. Clarifies that the owner or operator may be a single individual or entity or multiple affiliated entities.
15. Requires a minimum investment of \$200,000,000 from a newly constructed computer data center that attains certification under the energy star or green globes standard in order to qualify as a sustainable redevelopment project.
16. Removes the requirement that the owner, operator or qualified collation tenant of a computer data center must present the retailer its certificate of qualification in order to ensure that:
  - a. The retail classification does not apply to gross proceeds of sales or gross income from computer data center equipment and that the storage, use or consumption of computer data center equipment is exempt from the use tax.
  - b. The storage, use or consumption of computer data center equipment is exempted from the use tax.

- c. A city, town or special taxing district does not levy a transaction privilege, sales, use or other similar tax on computer data center equipment and allows rented or leased computer data center equipment from the tax.
17. Modifies the definition of:
- a. *Computer data center equipment* to include equipment that is owned, leased or used by the owner or operator pursuant to a contract for right to use the equipment.
  - b. *Qualification period* to begin upon the effective date of the computer data centers certification, rather than the date on which the data center was certified and stipulates that the qualification period for a qualified colocation tenant may not extend beyond the qualification period for the owner or operator of the data center.
  - c. *Qualified colocation tenant* to include an entity that contracts with another qualified colocation tenant.
  - d. *Sustainable redevelopment project* to include a newly constructed computer data center that attains certification under the energy star or green globes standard
18. Defines *contributing qualified colocation tenant, existing building, investment and operator*.
19. Stipulates that the removal of the requirement that the owner, operator or qualified colocation tenant of a computer data center present the certificate to the retailer in order to qualify for certain tax exemptions applies retroactively to September 13, 2013.
20. Makes technical, conforming and clarifying changes.

**CURRENT LAW**

[A.R.S. § 41-1519](#) allows the owner or operator of a computer data center to be eligible to receive tax relief. The owner or operator must send a required form to ACA, who must approve or deny the center's eligibility within 60 days and subsequently issue certification. DOR is permitted to revoke a certification and recapture all or part of the tax relief provided to the owner or operator if certain requirements are not met. Currently, computer data center equipment is exempt from the tax imposed on the retail classification, the use tax and municipal taxes on privilege, sales, use or other similar municipal taxes if, at the time of purchase, the owner, operator or qualified colocation tenant presents the retailer with their certificate (A.R.S §§ [42-5061](#), [42-5159](#), [42-6004](#)).